

Appl. No. 10/717,056
Attorney Docket No.: 2002B169/2
Amdt. dated August 25, 2006
Response to Office Action of April 26, 2006

REMARKS/ARGUMENTS

Claims 1-2, 4-15, 17-29, 31-33, 35, 37-39, 41-43, and 45-49 are pending. Claim 32 has been amended to correct an obvious typographical error. Claim 31 has been canceled as being redundant over Claim 2. New Claim 49 has been added. Support for this new claim can be found in paragraphs [0039], [0047], and [0055].

Claim Rejections - 35 U.S.C. §102(e)

Claims 1-2, 4-15, 17-29, 31-33, 35, 37-39, 41-43, and 45-48 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. 2004/0132935 to Arjunan et al. (Arjunan-935.) According to MPEP § 716.10 "Attribution", under certain circumstances an affidavit or declaration may be submitted which attempts to attribute an activity, a reference or part of a reference to the Applicant. If successful, the activity or the reference is no longer applicable. When subject matter, disclosed but not claimed in a later application filed by the inventor and another, is claimed in a later application filed by the inventor, the joint patent or publication is a valid reference under U.S.C. § 102(a), (e), or (f) unless overcome by an unequivocal declaration by the inventor under 37 CFR 1.132 that he conceived or invented the subject matter disclosed in the patent or published application.

Applicant submits herewith an unequivocal declaration under 37 CFR 1.132 that he conceived or invented the subject matter disclosed in Arjunan-935. Applicant requests that the Examiner wait for the results of the declaration prior to addressing this issue. Accordingly, the reference is respectfully requested to be removed as prior art in the instant application.

Double Patenting Rejections

Claims 1-2, 4-15, 17-29, 31-33, 35, 37-39, 41-43, and 45-48 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-35 of co-pending Application No. 10/681,966 to Arjunan et al. (Arjunan-966.)

According to the MPEP §804, paragraph II, B, 1(a), unless a claimed invention in the application is obvious over a claimed invention in a patent, no double patenting rejection of the obviousness type should be made. In addition, there are significant differences between a rejection based on double patenting and one based on section 102 and 103. One significant

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issued or to be issued patent, whereas an obviousness rejection under section 103 relies on a comparison with what is disclosed (whether or not claimed) in the same issued or to be issued patent. (see MPEP §804, paragraph III.) Accordingly, a nonstatutory obviousness-type double patenting rejection is proper if the subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application.

Claims 1-35 of Arjunan-966 recite a process of preparing a polymer composition that includes branched crystalline polypropylene, comprising:

combining two or more different metallocene catalyst compounds with a polymerization medium that includes polypropylene, for a time sufficient to provide branched crystalline polypropylene that has from 0.0 wt% to 2.0 wt% ethylene and a heat of fusion of 70 J/g or more. The claimed subject matter of Arjunan-966 is in contrast to the presently claimed invention, which recites a process of preparing a polymer composition that comprises branched crystalline polypropylene using a single metallocene catalyst. The claims of Arjunan-966 require 2 catalysts and thus do not suggest a process utilizing a single metallocene catalyst. As such, the claims of Arjunan-966 do not obviate Applicant's presently claimed invention. Removal of the rejection is respectfully requested.

Claims 1-2, 4-15, 17-29, 31-33, 35, 37-39, 41-43, and 45-48 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-157 of co-pending Application No. 10/667,585 to Brandt et al. (Brandt.) Claims 1-19 of Brandt are directed to a polymer. Claims 20-63 are directed to a process, as are Claims 74-157. Claim 20 recites a process to polymerize olefins comprising contacting, in a polymerization system, olefin monomers having three or more carbon atoms with:

- 1) a metallocene catalyst compound,
- 2) an activator,
- 3) optionally comonomer, and
- 4) optionally diluent or solvent,

at a temperature above the cloud point temperature of the polymerization system and a pressure no lower than 10 MPa below the cloud point pressure of the polymerization system and less than 1,000 MPa,

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where the polymerization system comprises the monomers, any comonomer present, any diluent or solvent present, and the polymer product,

where the olefin monomers are present in the polymerization system at 40 weight % or more, and

where polymerization takes place in a loop reactor operated at pressures of 25 to 30 MPa.

Similar to Claim 20 above, process claims 74 and 120 of Brandt require the process to take place at a temperature above the cloud point temperature of the polymerization system. This limitation is in no way disclosed or suggested in Applicant's presently claimed invention, nor do these claims in any-way disclose or suggest Applicant's presently claimed invention. Accordingly, the claims of Brandt fail to obviate the presently claimed invention. Removal of the rejection is respectfully requested.

Claims 1-2, 4-15, 17-29, 31-33, 35, 37-39, 41-43, and 45-48 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over Claims 1-41 of copending Application No. 10/667,586 to Arjunan et al. (Arjunan-586.)

Claim 1 of Arjunan-586 recites a process to produce propylene polymers comprising contacting a metallocene catalyst compound and an activator with a reaction medium comprising propylene, from 0 to 30 volume % of one or more solvents and from 0 to 30 mole % of one or more comonomers, under temperature and pressure conditions below the melting point of the propylene polymer and where: a) the temperature is at or above the critical temperature for the reaction medium, and the pressure is at least 500 kPa above the critical pressure of the reaction medium; or b) the temperature is 1°C or more above the critical temperature for the reaction medium, and the pressure is at or above the critical pressure of the reaction medium; or c) the temperature is 1°C or more above the critical temperature for the reaction medium, and the pressure is at least 500 kPa above the critical pressure of the reaction medium, provided that when the metallocene catalyst compound is 1,2-ethylene bis(indenyl)zirconium dichloride supported on silica or the metallocene catalyst compound is dimethylsilylbis(indenyl) zirconium dichloride supported on silica then the activator is not methyl alumoxane.

Accordingly, the process claims of Arjunan-586 require the process to proceed above the critical temperature and/or above the critical pressure of the reaction medium. These claims fail to disclose or suggest Applicant's presently claimed invention and thus, do not obviate

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Applicant's presently claimed invention. Regarding this double patenting rejection, Applicant respectfully submits that, due to the still-changeable nature of the claims, this rejection should be held in abeyance, e.g., until such point as the pending claims are allowable but for such double patenting rejections. At that juncture, Applicant will, if necessary, submit the appropriate terminal disclaimer to obviate any then-pending double patenting rejection with regard to Arjunan-586.

Applicant respectfully submits that the rejection is not ripe for resolution until there are otherwise allowable claims in the instant case and allowed or issued claims in the case to which the terminal disclaimer is sought. Indeed, Applicant respectfully notes that the M.P.E.P. instructs the Examiner to withdraw a provisional double patenting rejection in the earlier filed of two pending applications and to allow that earlier filed application to issue as a patent without a terminal disclaimer. See M.P.E.P 804(I)(B)(1).

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CONCLUSION


Applicant respectfully solicits a notice of allowance. Applicant invites the Examiner to telephone the undersigned attorney if there are any issues outstanding which have not been presented to the Examiner's satisfaction.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2002B169/2).

Respectfully submitted,

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Date

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